

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1074

To be argued by
MARK E. ARROLL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Respondent,

-against-

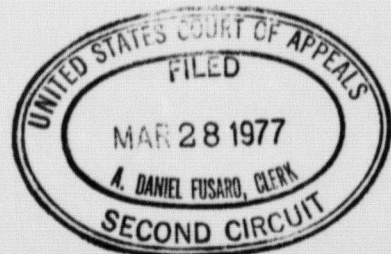
CLARK BRACEWELL a/k/a JOHN CLARK,

Defendant-Appellant.

B
P/S

APPENDIX

MARK E. ARROLL
Attorney for Defendant-Appellant
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U.S. District Court
JUDGE/MAGISTRATE Assigned U.S.
OFFENSE MO ☐ 0208 01 0844
SOEMANOR Mx ☐ 0208 01
FELONY Fm ☒ District Office

BRACEWELL, CLARK
a/k/a John Clark

(LAST, FIRST, MIDDLE)

Tenney

Cave Filed
Mo. Day
08 31
No. of Docs
01

76 0863 01

U.S. MAG.
CASE NO. 76-953

U.S. TITLE/SECTION
21:846
21:812, 841
21:812, 951, 952

OFFENSES CHARGED
Consp. to viol. Fed. Narco. Laws.
Possess. & distr. of liquid hashish.
Importation of liquid hashish.

ORIGINAL COUNTS

21:846
21:812, 841
21:812, 951, 952
& 960

Consp. to viol. Federal Narcotics Laws
Possess. & distr. of liquid hashish, I.
Importation of liquid hashish, I.

2/14



II. KEY DATES & INTERVALS

ARREST OF
U.S. Custody Began
* 8-30-76
Summons Served
First Appearance

INDICTMENT
High Risk Date
Indict Waived
In Charging District

ARRAIGNMENT
Information ☐
8-30-76
Superseding Indictment ☐
12-9-76

1st Plea
9-9-76
Final Plea

Trial Set For
Ver. Dic. ☒
Xing ☐ G ☐ NOL
G. Fine
Ver. Drawn
NOL ☐ G ☐ NOL

Ver. Dic. ☒
12-20-76
Trial Began ☒
12-20-76
Trial Ended
12-22-76

Disposition of Charges
12-22-76
☒ Convicted
☐ Acquitted
☐ Dismissed
☐ On Governor's Motion

SENTENCE
2-4-77
☒ On All Charges
☐ On Lesser Offense(s)
☐ ACP
☐ W.P.

MAGISTRATE		INITIALS	OUTCOME
Search Warrant	Issued Return	DATE 8/19/76 INITIAL/NO MDJ-08AB	INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL (HEARING) ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT
Summons	Issued Return	DATE 8/19/76 INITIAL/NO MDJ-08AB	DATE 8/19/76 INITIAL/NO MDJ-08AB
Arrest Warrant Issued	COMPLAINT	DATE 8/19/76 INITIAL/NO MDJ-08AB	DATE 8/19/76 INITIAL/NO MDJ-08AB
OFFENSE (in Complaint)	21 USC 952(a) - UNLAWFULLY IMPORT A NARCOTIC DRUG		

U.S. Attorney or Asst.

Nathaniel H. Akerman
791-1957

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ATTORNEYS
James A. Pascarella, Esq.
The Lever Bldg., Suite 352
114 Old Country Road
Mineola, New York 11501 (516) 742-4952

* Show last names and suffix numbers of other defendants on same indictment/return.

DATE	DOCUMENT NO.	PROCEEDINGS
8/19/76		Complaint filed, warrant issued
8/31/76		Indictment filed, 76 Cr. 863
8-31-76		Bail fixed by the Court in the amount of \$50,000. Cash or Surety.
9-9-76		Deft. and counsel not present. Court directs a not guilty plea be entered. Case assigned to Tenney, J... Haight, J.
9-27-76		Received Warrant of arrest from the district of California with Marshals return executed 9-29-76.
10-13-76		Filed CJA 20 appointment of counsel James A. Pascarella. Jacobs, Mag. issued all copies.
10-15-76		Deft. (atty. James Pascarella) pretrial conf. held. 10 days for motions. Tenney, J. 2 10-15
11-11-76		Deft. (atty. James Pascarella) atty. moves to withdraw from case. Motion granted upon appointment of new counsel, Tenney, J.
11-19-76		Filed def't's notice of motion re: Grand Jury minutes, etc.
11-26-76		Filed Gov't's affdvt. re: response to def't. Bracewell's notice of motion.
12-9-76		Filed Superseding Indictment & referred to Tenney, J. Motley, J.

101-179:

challenge to the Grand Jury indictment - denied
bill of particulars - granted to extent indicated
reference to the alias - denied
bail - reduction of bail denied.

Suppression of evidence - denied. Tenney, J. m/n

12-15-76

Filed letter from Mark E. Arroll to Judge Tenney
dated 12-6-76 re: bill of particulars.

12-20-76

Jury trial begun before Judge Tenney.

12-21-76

Trial cont'd.

12-22-76

Trial cont'd. and concluded. Jury found deft.
guilty on cts 1, 2 & 3. P.S.I. ordered. Sentence
adj'd. until 1-21-77 at 2PM. Deft. remanded.
(no bail). Tenney, J.

02-31-77

Filed deft's notice of motion re: new trial, arrest of judgment
pursuant to FRCrP 34, etc. ret: 2-4-77.

01-31-77

Filed transcript of record of proceedings, dated:
December 20, 21, 22, 1976.

02-04-77

Deft. (atty. present) motion to nolle orig. charges-granted.
Tenney, J.

02-04-77

Filed Judgment (atty. Mark Arroll) Cts. 1, 2 & 3- 4 yrs.
impr. ea. ct. conc. 3 yrs. S.P. 21:841. Tenney, J.
issued all copies.

02-14-77

Filed deft's notice of appeal from judgment of 2-4-77.
mailed notice to deft. & U.S. Atty.

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THIS COPY
MAILED 11:00 AM, 1977
R. G. Glick
CLOCK

FINE AND RESTITUTION PAYMENTS		RECEIPT NUMBER	C.D. NUMBER
DATE	AMOUNT		

Clerk of the Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

CLARK BRACEWELL
a/k/a John Clark

Defendant

INDICTMENT

76 Cr.

The Grand Jury charges:

1. From on or about the 1st day of August, 1976, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York, CLARK BRACEWELL a/k/a John Clark the defendant, Helen Brown, named herein as a co-conspirator but not as a defendant and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant and Helen Brown, named herein as a co-conspirator but not as a defendant, unlawfully, intentionally and knowingly would distribute and possess with intent to distribute a Schedule I controlled substance the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the object thereof, the following overt acts were committed

1. On or about August 5, 1976, the defendant, CLARK BRACEWELL, a/k/a John Clark and co-conspirator Helen Brown, had a conversation in London, England.

2. On or about August 5, 1976, the defendant CLARK BRACEWELL, a/k/a John Clark, gave co-conspirator Helen Brown in London, England a suitcase with a false bottom containing approximately five pounds of liquid hashish.

3. On or about August 11, 1976, the defendant, CLARK BRACEWELL, a/k/a John Clark, arrived from London, England by airplane at Kennedy Airport, New York.

4. On or about August 12, 1976, Helen Brown, disembarked in the port of New York from the ship, the Queen Elizabeth II, carrying the suitcase with a false bottom containing approximately five pounds of liquid hashish.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

On or about the 12th day of August, 1976, in the Southern District of New York, CLARK BRACEWELL, a/k/a John Clark, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately five pounds of liquid hashish.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 12th day of August, 1976, in the Southern District of New York, CLARK BRACEWELL, a/k/a John

Clark, did unlawfully, wilfully, knowingly and intentionally import into the customs territory of and into the United States from a place outside thereof, a Schedule I controlled substance, to wit, approximately five pounds of liquid hashish.

(Title 21, United States Code, Sections 812, 951, 952, and 960; Title 18 United States Code, Section 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

In the Southern District of New York and elsewhere:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

CLARK BRACEWELL
a/k/a John Clark,

Defendant.

INDICTMENT

S 76 Cr. 863

The Grand Jury charges:

1. From on or about the 1st day of March, 1976, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York, CLARK BRACEWELL a/k/a John Clark the defendant, Helen Brown, named herein as a co-conspirator but not as a defendant and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant and Helen Brown, named herein as a co-conspirator but not as a defendant, unlawfully, intentionally and knowingly would distribute and possess with intent to distribute a Schedule I controlled substance the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed

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The Grand Jury further charges:

in the Southern District of New York and elsewhere:

1. On or about August 5, 1976, the defendant, CLARK BRACEWELL, a/k/a John Clark and co-conspirator Helen Brown, had a conversation in London, England.
2. On or about August 5, 1976, the defendant CLARK BRACEWELL, a/k/a John Clark, gave co-conspirator Helen Brown in London, England a suitcase with a false bottom containing approximately five pounds of liquid hashish.
3. On or about August 11, 1976, the defendant, CLARK BRACEWELL, a/k/a John Clark, arrived from London, England by airplane at Kennedy Airport, New York.
4. On or about August 11, 1976, the defendant CLARK BRACEWELL, a/k/a John Clark, wrote a false address on a United States Customs Declaration at Kennedy Airport, New York.
5. On or about August 12, 1976, Helen Brown, disembarked in the port of New York from the ship, the Queen Elizabeth II, carrying the suitcase with a false bottom containing approximately five pounds of liquid hashish.
6. On or about August 25, 1976, the defendant CLARK BRACEWELL, a/k/a John Clark, sent from Huntington Beach, California a \$1,000 Western Union money order to Helen Brown.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

On or about the 12th day of August, 1976, in the Southern District of New York, CLARK BRACEWELL, a/k/a John Clark, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately five pounds of liquid hashish.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 12th day of August, 1976, in the Southern District of New York, CLARK BRACEWELL, a/k/a John

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(Title 21, United States Code, Sections 812, 951, 952, and 960; Title 18 United States Code, Section 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

Dec 9, 1976

U.S. v. 1
Bracewell
12/21/76 2
(Tenney, D.J.) 3

ss23

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury,
we now come to that part of the case where all the evidence
is in; the lawyers have presented their arguments, and
you are about to exercise your final role, which is to pass
upon and decide the fact issues that are in this case.

But first I want to express my thanks to each
of you for your faithful devotion to your duties in this
case, for your promptness and for the attention that you
have paid.

It is your responsibility, of course, to reach
a just decision and a determination of the charges against
the defendants, and I know that you will deliberate toward
reaching a verdict fairly, honestly and conscientiously.

Now, as jurors I want to impress upon you again
that you are the sole and exclusive judges of the facts.
You pass upon the weight of the evidence; you resolve
such conflicts as there may be in the evidence, and you
draw such reasonable inferences as may be warranted by
the testimony or exhibits in the case.

My function at this point is to instruct you as
to the law that is applicable to the case, and it is your
sworn duty to accept the law as I state it to you in these
instructions and to apply it to the facts as you find the

1 ss24

2 facts to be.

3 Now, you are to perform this duty without bias
4 or prejudice to the defendant or to the Government. The law
5 does not permit jurors to be governed by sympathy or
6 prejudice or bias. Both parties and the public as well
7 as the Court expect you to carefully and impartially con-
8 sider all the evidence in the case, follow the law as stated
9 by the Court, and reach a just verdict.

10 It is your duty as jurors to consult with one
11 another and to deliberate with a view towards unanimously
12 agreeing upon a verdict if you can do without violence to
13 your individual judgment and conscience.

14 Now with respect to any fact matter, it is
15 your recollection and yours alone that governs.

16 Anything that counsel either for the Government
17 or the defense may have said with respect to matters in
18 evidence, whether during the trial or in the form of a
19 question, in argument or in summation, is not to be sub-
20 stituted for your own recollection of the evidence.

21 So, too, anything the Court may have said during
22 the trial or may refer to during the course of these
23 instructions as to any matter in evidence is not to be
24 taken in place of your own recollection. As I have
25 instructed you during this trial, a case must be decided

1 ss25

2 upon sworn testimony of the witnesses and such exhibits
3 as were received in evidence.

4 In addition, let me point out that the fact
5 that the Government is a party - that is, that the
6 prosecution is brought in the name of the United States
7 of America entitles it to no greater consideration than
8 that accorded to any other party to the litigation; and
9 by the same token it is entitled to no less consideration.
10 All parties, the Government and individuals alike, stand
11 equal before the bar of justice.

12 Now, before we consider the charges themselves
13 and what is required to sustain them, there are certain
14 preliminary observations that are in order, certain
15 principles of law that are applicable in every criminal
16 case to which I made reference at the time of your selection
17 as jurors.

18 First, the indictment is simply an accusation,
19 a charge. It is no evidence or proof of the guilt of
20 a defendant. It is merely a means utilized by the Govern-
21 ment to bring a defendant before this Court. It is
22 nothing more or less, and you will not give any weight
23 whatever to the fact that an indictment has been returned
24 against this defendant.

25 Now, the defendant has pleaded not guilty.

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1
2 Therefore the Government has the burden of proving by
3 competent evidence the charges made against him beyond a
4 reasonable doubt.

5 Now, whether this burden is sustained does not
6 depend upon the number of witnesses or the quality of
7 testimony, but, rather, the nature and quality of the
8 testimony and other evidence. It is a burden that never
9 shifts and remains upon the Government throughout the entire
10 trial.

11 A defendant does not have to prove his
12 innocence. On the contrary, he is presumed to be innocent
13 of the accusations contained in the indictment, and the
14 Government must prove his guilt beyond a reasonable doubt.

15 Now, this presumption of innocence is not an
16 idle phrase to be taken lightly by the jury but is an
17 important right belonging to every person accused of a
18 crime, and each juror is bound to entertain it conscientious-
19 ly without any mental reservations whatever.

20 As I told you at the start of this trial, this
21 presumption of innocence was in the defendant's favor then;
22 it was present during the entire course of the trial; it
23 is in the defendant's favor even as I instruct you now, and
24 remains in the defendant's favor during the course of your
25 deliberations in the jury room. It is removed only if

1 ss27

2 and when you, the members of the jury, are satisfied that
3 the Government has sustained the burden of proving the
4 guilt of the defendant beyond a reasonable doubt.

5 Now before we turn to the specific charges in
6 this case I want to define for you a fundamental term of
7 law which will be referred to frequently as I instruct you
8 about those charges, namely, reasonable doubt.

9 What is a reasonable doubt? A reasonable
10 doubt is one which appeals to your reason, your judgment,
11 your common sense and your experience. It is not impulse,
12 whim or speculation. It is not an excuse to avoid the
13 performance of an unpleasant duty nor sympathy for a
14 defendant. On the contrary, it is a doubt which a
15 reasonable person has after carefully weighing all of
16 the evidence.

17 Now a reasonable doubt may arise not only from
18 the evidence presented but also from the lack of evidence.
19 Since the burden is always on the prosecution to prove the
20 accused guilty of every essential element of the crime
21 charged beyond a reasonable doubt, a defendant has the
22 right to rely upon the failure of the prosecution to
23 establish such proof in order to create a reasonable
24 doubt.

25 Now, if after a fair and impartial consider-

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ss28

T2-hp

1 ss28
2 ation of all the evidence in the case, or the lack of it,
3 you can honestly say that you have such a doubt as would
4 cause prudent persons to hesitate before acting in matters
5 of importance to themselves, then you have a reasonable
6 doubt, and in that circumstance it is your duty to acquit.
7 On the other hand, if after a fair and impartial consider-
8 ation of all the evidence you can honestly say that you
9 are satisfied of the guilt of the defendant, with such con-
10 viction that you would be willing to act upon it in
11 important and weighty matters in the affairs of your own
12 life, then you have no reasonable doubt and, in that
13 circumstance, it is your duty to convict.

14 If the jury feels that the evidence, in the case
15 as reasonably permitting of two conclusions, one of
16 innocence, the other of guilt, the jury must adopt a con-
17 clusion of innocence and acquit.

18 Now, one final word on this subject.
19 "Beyond a reasonable doubt" does not mean beyond all
20 possible doubt. If that were the rule, few persons,
21 however guilty they might be, would be convicted. Conse-
22 quently, the law in a criminal case is that it is suffi-
23 cient if the guilt of a defendant is established beyond a
24 reasonable doubt.

25 Now, the indictment is in three counts.

ps29

Each count charges a separate crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each count in the indictment.

Let's turn to the specific charges against the defendant Bracewell.

Count 1 charges a conspiracy. It charges that the defendant and Helen Brown and others known and unknown to the grand jury, conspired to violate the drug laws with respect to the distribution of hashish.

I shall refer to Counts 2 and 3 as the substantive counts to distinguish them from the conspiracy count. The conspiracy count charges the defendant with plotting, scheming and agreeing to commit offenses while the substantive counts charge the defendant with the actual commission of, that is, with actually carrying out, an alleged offense.

Let me further explain the difference between a conspiracy count and a substantive count. Count 1 as I have said, charges the defendant with agreeing to possess with the intent to distribute and to distribute hashish.

A conspiracy to commit a crime is an entirely separate and different offense from the substantive crime which is the object of the conspiracy. The essence of the crime of conspiracy is an agreement or understand-

ps30

ing to violate other laws. The corresponding substantive offenses as the actual violation of those other laws. Thus, if a conspiracy exists, even if it should fail of its purpose, it is still punishable as a crime. Consequently, in a conspiracy charge, there is no need to prove an actual importation or distribution of, or possession with intent to distribute hashish.

In our Federal Government, there are no crimes except those defined or created by statute, that is laws written by Congress.

And so in this case, as in all others, the charges, the accusations against the defendant are made under certain Federal laws passed by the Congress.

The charges in Count 1, 2 and 3 allege violations of part of an act known as the Comprehensive Drug Abuse Prevention & Control Act of 1970. Among other things, this act forbids the importation, manufacture, possession with the intent to distribute and distribution of certain kinds of drug controlled substances, such as hashish.

Hashish is a "controlled substance" under Schedule I of the law.

The Comprehensive Drug Abuse Prevention & Control Act of 1970 also provides that "any person who ... conspires to commit any of the offenses [which the Act

1 ps31

2 forbids is guilty of a crime]".

3 Simply stated, this law makes it unlawful for
4 any person knowingly or intentionally to conspire to
5 distribute or possess with the intent to distribute
6 hashish.

7 This latter provision is the law which Count 1
8 of the indictment charges that the defendant violated.

9 In Count 2, the indictment charges that the
10 defendant violated the provisions of the Comprehensive
11 Drug Abuse Prevention & Control Act of 1970 by committing
12 what I have referred to as a substantive offense, that is,
13 by knowingly or intentionally distributing or possessing
14 with the intent to distribute hashish, a controlled sub-
15 stance.

16 In Count 3, the indictment charges that the
17 indictment violated another such substantive offense, that
18 is, by knowingly or intentionally importing into the United
19 States from a place outside, hashish, a controlled sub-
20 stance.

21 Now let us turn to Count 1, the conspiracy
22 charge. Before you may convict defendant Bracewell
23 under Count 1, the following essential elements must be
24 established beyond a reasonable doubt:

25 You must find that at some time between March

1 ps32

2 1st, 1976 and August 31st, 1976, the date the indictment
3 was filed, an agreement existed among the co-conspirators
4 or between at least two of them, and that it was a part
5 of this agreement either to distribute or possess with
6 intent to distribute a Schedule I controlled substance.
7 In this connection you are instructed that liquid hashish
8 is a Schedule I controlled substance.

9 The conspiracy charge, as I have already told
10 you, is entirely separate and distinct from a substantive
11 violation of law, that is, for example, the actual
12 importation or possession of hashish with the intent to
13 distribute it. This fact, however, does not preclude
14 you from considering proof of an actual violation as some
15 evidence that a conspiracy existed.

16 Second, you must find that the defendant
17 knowingly and wilfully associated himself with the con-
18 spiracy, and finally, third, you must find that one of the
19 members of the conspiracy committed at least one of the
20 overt acts set forth in the indictment at or about the time
21 and place alleged and that such act was in furtherance of
22 the conspiracy.

23 If the Government fails to establish each
24 essential element beyond a reasonable doubt as to a partic-
25 ular count, you must acquit the defendant on that count; if

1 ps33

2 it succeeds, your duty is to convict him on that count.

3 Going back in some greater detail, the first
4 element you must find in reaching a guilty verdict is that
5 a conspiracy existed.

6 The gist of the crime of conspiracy is the
7 unlawful combination or agreement to do an act which is a
8 violation of the law.

9 A conspiracy has sometimes been called a
10 partnership in criminal purposes in which each member
11 becomes the agent of every other member.

12 To establish a conspiracy, the Government is
13 not required to show that two or more persons have sat
14 around a table and entered into a contract, orally or in
15 writing, stating that they have formed a conspiracy to do
16 an act which is a violation of the law, setting forth
17 details of the plans, the means by which the unlawful
18 project is to be carried out, or the part to be played by
19 each conspirator. Indeed, it would be extraordinary
20 if there were such a formal document or specific oral
21 agreement. Your common sense will tell you that when
22 individuals, in fact, undertake to enter into a criminal
23 conspiracy, much is left to the unexpressed understanding.

24 It is sufficient if two or more persons, in any
25 manner, through any contrivance, impliedly or tacitly, come

1 ps34

2 to a common understanding to violate the law. Express
3 language or specific words are not required to indicate
4 assent or attachment to a conspiracy. You need only
5 find that the defendant Bracewell entered into an unlawful
6 agreement with Helen Brown, the alleged co-conspirator,
7 or other persons in order to find that a conspiracy
8 existed.

9 In determining whether there has been an
10 unlawful agreement, you may judge acts and conduct of the
11 defendant Bracewell and Helen Brown, the alleged co-
12 conspirator, which were done to carry out an apparent
13 criminal purpose. Usually, the only evidence available
14 is that of disconnected acts which, however, when taken
15 together in connection with each other show a conspiracy
16 to secure a particular result as satisfactorily and con-
17 clusively as more direct proof. The offense is complete
18 when the agreement is made to do any act in violation of
19 the law and any single act, innocent or not, to effect the
20 object of the conspiracy is thereafter committed by at
21 least one of the co-conspirators.

22 Proof concerning the accomplishment of the
23 objects of the conspiracy may be the most persuasive
24 evidence of the existence of the conspiracy itself.
25 Success of the venture of the actual importation of the

2 hashish into the United States, if you believe that
3 happened, may be the best proof of the existence of the
4 agreement. In determining whether the conspiracy
5 charged in this indictment actually existed, you may con-
6 sider the evidence of the acts and conduct of the alleged
7 conspirators, the defendant Bracewell and Helen Brown, as
8 a whole and the reasonable inference to be drawn from such
9 evidence. If, upon such consideration of the evidence,
10 you find beyond a reasonable doubt that the minds of at
11 least two of the alleged conspirators, the defendant
12 Bracewell and Helen Brown, met in an understanding way
13 and that they agreed, as I have explained a conspiratorial
14 agreement to you, to work together in furtherance of the
15 unlawful scheme alleged in the indictment, then proof of the
16 existence of the conspiracy is complete.

17 If you satisfy yourselves, beyond a reasonable
18 doubt, that the conspiracy as alleged in the indictment
19 existed, then you must decide whether the defendant
20 Bracewell knowingly and wilfully was an active participant
21 in the unlawful plan, with the intention of furthering its
22 objectives. Mere knowledge of an illegal act on the
23 part of some other alleged co-conspirator is not sufficient.
24 Merely acting in the way which incidentally furthers the
25 purpose of the conspiracy, without knowledge that a con-

1 ps36

2 spiracy exists, does not make a person a member of the
3 conspiracy.

4 The terms "unlawfully, wilfully, and knowingly"
5 mean that you must be satisfied beyond a reasonable doubt
6 that the defendant knew what he was doing and that he acted
7 deliberately and voluntarily as opposed to mistakenly or
8 accidentally or as a result of some coercion.

9 In determining whether the defendant became a
10 member of the conspiracy, you must determine not only
11 whether he participated in it, but whether he did so with
12 knowledge of its unlawful purpose. Did he join with
13 awareness of at least some of the basic aims and purposes
14 of the conspiracy?

15 Knowledge is a matter of inference from facts
16 proved. It is not necessary that the defendant be
17 fully informed as to the details of the scope of the con-
18 spiracy in order to justify an inference of knowledge on
19 his part. To have guilty knowledge the defendant need
20 not know the full extent of the conspiracy and all of its
21 activities and actors.

22 I want to caution you that mere association
23 with a conspirator does not make one a member of the con-
24 spiracy nor is knowledge without participation sufficient.
25 What is necessary is that the defendant participate with

1 knowledge of at least some of the purposes of the con-
2 spiracy and with intent to aid in the accomplishment of
3 those unlawful ends.
4

5 To find that the defendant was a member of the
6 conspiracy you must find that the defendant knew that the
7 purpose was either the unlawful possession with intent to
8 distribute hashish or distribution of hashish. Where an
9 unlawful end is sought to be effected and two or more persons
10 actuated by a purpose to accomplish that end knowingly
11 work together in furtherance of it, every one of such
12 persons becomes a member of the conspiracy, and that
13 includes people whose parts were subordinate or minor
14 rather than major or leading.

15 The guilt of a conspirator is not governed
16 by the extent of his participation. It is not required
17 that each of the conspirators participate in, or have knowl-
18 edge of, all of its operations. He may join at any
19 point in its progress and be held responsible for all that
20 may be or has been done.

21 In other words, it is not required that a
22 person be a member of the conspiracy from its very start -
23 he may join it at any point during its progress, and be
24 held responsible for all that has been done before he
25 joined, and all that may be done thereafter during its

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2 existence and while he remains a member. Simply stated,
3 using the partnership analogy again, by becoming a partner
4 he assumes all the liabilities of the partnership, including
5 those that occurred before he became a member.

6 Thus, if you find that the defendant Bracewell
7 is a conspirator, then the fact that he did not actually
8 bring the hashish into the United States itself does not
9 matter since he is responsible for all that was done in
10 furtherance of the conspiracy during its continuance.

11 A conspiracy, once formed, is presumed to have
12 continued until its objectives are accomplished or there
13 is an affirmative act of termination by its members.
14 So too, once a person is found to be a member of a con-
15 spiracy, he is presumed to continue his membership until its
16 termination, unless there is affirmative proof offered of
17 withdrawal or disassociation.

18 Now, in determining whether a conspiracy
19 existed, the jury should consider the actions and declar-
20 ations of all of the alleged participants. However, in
21 determining whether a particular defendant was a member of
22 the conspiracy, if any, the jury should consider only his
23 acts and statements. He cannot be bound by the acts
24 or declarations of other participants until it is estab-
25 lished that a conspiracy existed, and that he was one of

1 its members.

2
3 Now we come to the third element. Assuming,
4 first, that you have found that the alleged conspiracy
5 existed, and, second, that the defendant Bracewell was a
6 member of that conspiracy, then you must find the third
7 element, that is, the commission of an overt act in further-
8 ance of the conspiracy.

9 An overt act is any step, action or conduct
10 which is taken to achieve, accomplish or further the
11 objective of the conspiracy. The purpose of requiring
12 proof of an overt act is that while parties might conspire
13 and agree to do an act which violates the law, they may
14 change their minds and do nothing to carry it into effect,
15 in which event, the agreement would not constitute an
16 offense.

17 The overt act need not be a criminal act or the
18 very crime which is the object of the conspiracy.

19 The indictment charges that the following
20 overt acts were done in furtherance of the conspiracy:

21 That on or about August 5, 1976, the defendant
22 Clark Bracewell, also known as John Clark, and co-conspirator
23 Helen Brown, had a conversation in London, England; that
24 on or about August 5, 1976, the defendant Clark Bracewell,
25 also known as John Clark, gave co-conspirator Helen Brown

in London, England, a suitcase with a false bottom containing approximately five pounds of liquid hashish.

Third, that on or about August 11, 1976, the defendant, Clark Bracewell, also known as John Clark, arrived from London, England by airplane at Kennedy Airport, New York.

Fourth, that on or about August 11, 1976, the defendant Clark Bracewell, also known as John Clark, wrote a false address on a United States Customs declaration at Kennedy Airport, New York.

Fifth, that on or about August 12, 1976, Helen Brown disembarked in the Port of New York from the ship, the Queen Elizabeth II, carrying the suitcase with a false bottom containing approximately five pounds of liquid hashish.

Six, that on or about August 25, 1976, the defendant Clark Bracewell, also known as John Clark, sent from Huntington Beach, California a \$1000 Western Union money order to Helen Brown.

Now, it is not necessary for the Government to prove that each member of the conspiracy committed or participated in any particular overt act, since the act of any co-conspirator done in furtherance of the conspiracy becomes the act of all the other members. Also,

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2 the Government is not required to prove each of the overt
3 acts as alleged in the indictment. It is sufficient if
4 it proves the commission of at least one of the acts in the
5 Southern District of New York, which includes Manhattan,
6 at or about the time alleged, although in this case the
7 Government claims it has proved each act set forth in the
8 indictment.

9 The overt act need not have occurred at the
10 precise time or place alleged in the indictment. While
11 the indictment charges that the conspiracy existed from on
12 or about the 1st day of March 1976 and continuously there-
13 after up to and including August 31, 1976, the date of the
14 filing of the indictment, it is not essential that the
15 Government prove that the conspiracy started and ended on
16 or about those specific dates.

17 It is sufficient if you find that in fact a
18 conspiracy was formed and existed for some time within the
19 period set forth in the indictment and that at least one
20 of the overt acts was committed in furtherance thereof
21 within that period.

22 Now, when people enter into a conspiracy to
23 accomplish an unlawful end, they become agents for one
24 another in carrying out the conspiracy. Hence, the acts
25 or declarations of one in the course of the conspiracy and

1 in furtherance of the common purpose are deemed to be
2 acts of all, and all are responsible for such acts.
3

4 Accordingly, if you find, in accordance with
5 those instructions, that the alleged conspiracy existed
6 and that the defendant Bracewell and alleged co-conspirator
7 Brown were participants in it, then acts done, and state-
8 ments and declarations made, in furtherance of the con-
9 spiracy by Helen Brown may be considered against the
10 defendant Bracewell, even though such acts or declarations
11 were made in the absence and without the knowledge of the
12 defendant.

13 It is important to note that this principle
14 applies only to the acts and declarations done or made
15 during the continuance of the conspiracy and in furtherance
16 thereof, that is, to carry out, an unlawful objective or
17 purpose of the conspiracy. It does not apply to acts
18 or declarations which do not have these characteristics.

19 We now come to the substantive counts. As
20 indicated, Count 2 charges the defendant Bracewell with a
21 substantive offense, this is, the actual distribution of
22 or possession with the intent to distribute hashish.
23 The statute which the defendant is alleged to have violated
24 is Section 841 of Title 21, United States Code. That
25 section reads in pertinent part as follows:

"It shall be unlawful for any person knowingly or intentionally to distribute or to possess with intent to distribute a controlled substance."

Count 2 charges that on or about the 12th day of August, 1976, in the Southern District of New York, Clark Bracewell, also known as John Clark, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately five pounds of liquid hashish.

Before you can find the defendant Bracewell guilty of the crime charged in Count 2 of this indictment you must be convinced beyond a reasonable doubt that the Government has proved the following elements:

First, that on or about the 12th day of August 1976, the date charged in Count 2, that the defendant Bracewell distributed or possessed with intent to distribute a Schedule I controlled substance, namely hashish.

Second, that he did so unlawfully, wilfully and knowingly, and

Third, that the substance charged to have been distributed or possessed with intent to distribute was in fact a controlled substance.

Now, the first fact which you must find beyond a reasonable doubt in order to convict the defendant

Bracewell is that he distributed or possessed with intent to distribute a controlled substance. In a few moments I will instruct you on the phrase "a controlled substance."

Now I would like to focus on the meaning of the term "distribute" and "possess with intent to distribute" as they are used in that statute.

Now, what do these terms mean? According to the statute, the term "distribute" means the actual, constructive or attempted transfer of a controlled substance. A transfer in this context could be a sale of a controlled substance for money or in exchange for something other than money.

As to the phrase, "possess with intent to distribute", the word "possess" has its common every-day meaning, that is, to have something within one's control, either physically or constructively.

Physical custody obviously meets this requirement. In addition, one who does not have actual physical custody is said to possess "constructively" if he exercises dominion or control over an object. Such control may be demonstrated by the existence of a "working relationship or a sufficient association" between the defendant and one "having physical custody of the drugs so as to enable him to assure their production, without difficulty", or

by the ability of the defendant to dictate the movement or assured delivery of the drugs.

The word "intent" refers to a person's state of mind. Thus, the phrase "possess with intent to distribute" can be fairly stated to mean to exercise dominion or control over an object with the state of mind to transfer it.

I want to stress that it is sufficient if you find beyond a reasonable doubt that the defendant either distributed or possessed with intent to distribute the controlled substance.

As to the second element, the terms "unlawfully, wilfully and knowingly" mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he acted deliberately and voluntarily as opposed to mistakenly or accidentally or as a result of some coercion. Of course, it is not necessary that he knew he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general, unlawful nature of his acts.

Now, knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a

1 decision in these questions is for you to take into
2 consideration all the facts and circumstances shown by
3 the evidence, including the exhibits, and to determine from
4 all such facts and circumstances whether the requisite
5 knowledge and intent were present at the time in question.
6 Direct proof is unnecessary. Knowledge and intent may
7 be inferred from all the surrounding circumstances. I want
8 to repeat, however, what I said to you earlier today, since
9 it is applicable on the question of whether an individual
10 acted wilfully and with specific intent. There has been
11 testimony, as I mentioned before, of hashish having been
12 brought from Morocco to England, I believe, in a chess or
13 checker box. I think there was some admission on the
14 part of the defendant that he had been convicted in
15 England of possession of hashish, but you will recall what
16 the testimony is.

17
18 Evidence that an act was done at one time or
19 on one occasion is not any evidence or proof whatever
20 that a similar act was done at another time or on another
21 occasion. That is to say, evidence that a defendant
22 may have committed earlier acts of like nature may not be
23 considered by you in determining whether the accused com-
24 mitted any act charged in the present indictment nor may
25 evidence of an act, an alleged earlier act of a like nature

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1
2 be considered for any other purpose whatever unless you
3 first find that the other evidence in the case standing
4 alone establishes beyond a reasonable doubt that the
5 accused did the particular acts charged in the particular
6 count or counts of the indictment which you are consider-
7 ing. However, if you should find beyond a reasonable
8 doubt from other evidence in the case that the accused
9 did the act charged in the particular count under deliber-
10 ation, then you may consider evidence as to an alleged
11 earlier act of a like nature in determining the state of
12 mind or intent with which the accused did the act charged
13 in the particular count. And where proof of an alleged
14 earlier act of a like nature is established by evidence
15 which is clear and conclusive, you may, but are not
16 obliged to, draw the inference and find that in doing the
17 act charged in the particular count under deliberation, the
18 accused acted wilfully and with specific intent, and not
19 because of mistake or accident or other innocent reason.

20 Now the third element with respect to the
21 second count is the requirement that you find that hashish,
22 which is Exhibit 2, is hashish. If you so find, I
23 instruct you as a matter of law that hashish is a con-
24 trolled substance. However, you must be convinced
25 beyond a reasonable doubt that the substance which the

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2 defendants are charged with distributing or possessing with
3 intend to distribute was hashish or hash oil.

4 Now we come to the third of the three counts.

5 Count 3 charges the defendant Bracewell with
6 another substantive offense, this is, the actual importation
7 of hashish into the United States. The statute which
8 the defendant is alleged to have violated, is Section 952
9 of Title 21, United States Code. The section reads, in
10 pertinent part, as follows:

11 "It shall be unlawful to import into the
12 Customs territory of the United States from any place
13 inside thereof any controlled substance in Schedule 1."

14 Count 3 charges that on or about the 12th day
15 of August 1976, in the Southern District of New York,
16 Clark Bracewell, also known as John Clark, the defendant,
17 unlawfully, intentionally and knowingly did possess with
18 intent to distribute a Schedule 1 controlled substance,
19 to wit, approximately five pounds of liquid hashish.

20 Before you can find the defendant Bracewell
21 guilty of the crime charged in Count 3 of this indictment
22 you must be convinced beyond a reasonable doubt that the
23 Government has proved the following elements:

24 First, that on or about August 12, 1976 the
25 defendant Bracewell imported into the Customs territory

of the United States, in this instance New York City,
a controlled substance, in this instance hashish.

As to this fact, "import" means the bringing
into or introduction of any article into the Customs
territory of the United States. The term "Customs
territory" as used here includes New York City.

Second, you must find that the controlled
substance involved was hashish. Here I instruct you
again, as a matter of law, that hashish is a Schedule 1
controlled substance.

Third, that the defendant Bracewell acted
knowingly and wilfully. As to this element you should
consider and apply all that I have previously charged you
on the subject of knowledge and wilfulness in my earlier
instructions.

I want to read back because I left a certain
amount out of Count 3, the charge.

Count 3 charges that on or about the 12th day
of August, 1976, in the Southern District of New York,
Clark Bracewell also known as John Clark did unlawfully,
wilfully, knowingly and intentionally import into the
Customs territory of and into the United States from a
place outside thereof a Schedule 1 controlled substance,
to wit, approximately five pounds of liquid hashish.

That will make the elements which you will have to find a little more intelligible, namely, that first on August 12, 1976, the defendant imported into the Customs territory of the United States, New York City, a controlled substance, hashish, and as to in fact "import" means the bringing into or introduction of any article into the Customs territory of the United States and as I stated, this can be accomplished by the defendant procuring another person to bring the article into the United States.

The term "Customs territory of the United States" includes New York City.

Secondly, you must again find the controlled substance involved was hashish. Here I instruct as a matter of law hashish is a Schedule I controlled substance. And third, you must find the defendant Bracewell acted knowingly and wilfully and as to this element you should consider and apply all that I have previously charged you on the subject of knowledge and wilfulness in my earlier instructions.

Finally, it is not necessary for the Government to show in each of the substantive crimes in Counts 2 and 3 that the defendant Bracewell physically committed the crime himself. I have already generally indicated that, but I want to explain that the United States Code provides

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2 that a person who aids and abets another to commit an
3 offense is just as guilty of that offense as if he committed
4 it. Accordingly, you must find the defendant guilty of
5 the offense charged in the second count, if you find beyond
6 a reasonable doubt that Helen Brown committed the offense,
7 that it is the actual importation of the hashish, for
8 example, and that the defendant Bracewell aided and abetted
9 her.

10 Now, in order to aid and abet another to commit
11 a crime it is necessary that the accused wilfully
12 associated himself in some way with the criminal venture,
13 and wilfully participated in it as he would in something
14 he wishes to bring about; that is to say, that he wilfully
15 sought by some act or omission of his to make the criminal
16 venture succeed.

17 To determine whether the defendant aided and
18 abetted the commission of the offense, you ask yourselves
19 these questions;

20 Did he associate himself with the venture?
21 Did the defendant participate in it as something he wished
22 to bring about? Did he seek by his action to make it
23 succeed? If the defendant did, then the defendant is
24 an aider and abettor.

25 Now we come generally to the matters of

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2 evidence, to instructions that might be helpful.

3 Of course the admissions of the defendant are among the
4 most effectual proofs in the law, and constitute the
5 strongest evidence against the party making it that can
6 be given of the facts stated in the admissions. Accord-
7 ingly, you are entitled to give great weight to a defend-
8 ant's admissions in this case, if you find that defendant
9 Bracewell did make admissions.

10 Now we come to a matter that was discussed at
11 some length by counsel and that is the testimony of Helen
12 Brown.

13 As to Helen Brown, you have heard the factors
14 argued at length in summations. I will remind you not
15 necessarily of all but of some of the things that you will
16 want to review in your deliberations together on her
17 testimony.

18 You want to take into account what interests of
19 this witness, Helen Brown, would be served by her lying
20 and what interests would be served, if any, by her telling
21 the truth about the criminal things that she said she was
22 acquainted with.

23 Was the testimony of Helen Brown fabrica-
24 tion on the central issues before you induced by a belief
25 or hope that she would somehow receive favorable consider-

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2 ation concerning her difficulties or possible difficulties
3 with the law based on that fabrication? Or did the
4 witness concerned with self-interest or conscience or
5 whatever decide that she would be best served by taking
6 the witness stand and telling the truth about the matters
7 affecting the defendant here on trial?

8 Did Helen Brown have an understanding or belief,
9 however generated, that the best course for her sitting
10 on that witness stand would be falsely to implicate the
11 defendant here on trial? Or did Helen Brown come here
12 for the motive of personal advantage or any other motives
13 and mean to tell truthfully the stories that you heard
14 from this witness stand about the defendant here on
15 trial.

16 Those are just shorthand reminders of ques-
17 tions argued to you at much greater length. You will
18 clearly want to pay attention to all of those arguments
19 and these instructions and I think it is fair to add in the
20 end, with an accomplice as with other witnesses, you will
21 want to take the entire picture into account, all the
22 evidence in the setting that that witness, in that kind of
23 picture of the evidence or gaps in the evidence, in
24 deciding to what extent you should or may or will give
25 credence to the accounts given to you by her.

1 The defendant Bracewell has not testified
2
3 in this case. That is his absolute right, and in no
4 respect may such failure to testify be considered by you
5 as any evidence against him or as a basis for any presump-
6 tion or inference unfavorable to him. You must not
7 permit such fact to weigh in the slightest degree against
8 him and it should not enter into your deliberations or
9 discussion.

10 If you find beyond a reasonable doubt that
11 the defendant Bracewell used the name John Clark in order
12 to avoid subsequent identification, that would also be a
13 fact from which you may, but need not, infer a conscious-
14 ness of guilt on his part.

15 I want to explain that there are two types of
16 evidence which a jury may properly rely on in deciding
17 the guilt or innocence of an accused. One is direct
18 evidence such as testimony of a witness relating to what
19 he heard or saw, something he knows of through his own
20 knowledge, which bears directly on a fact issue in the
21 case. For example, testimony by a witness that he saw
22 a defendant in possession of an object is direct evidence
23 which, if believed by the jury, establishes the fact that
24 the defendant was in possession of the object.

25 The other type of evidence is circumstantial

evidence, which is proof of a fact of circumstance from which one may infer connected facts which reasonably follow in man's common experience.

Circumstantial evidence is that evidence which tends to prove a disputed fact through proof of other facts. To use a very simple example:

If you look out of the window and see it raining, then your statement that you see raining coming down is direct evidence that it is raining. If instead of looking out of the window you see a succession of people coming inside, each with raincoats, rubbers and umbrellas, and each dripping wet, then your statement as to that observation is circumstantial evidence of the fact that it is raining.

Circumstantial evidence is of no less value than direct evidence, for as a general rule the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Now, there are times when different inferences may be drawn from a certain set of facts. An inference is a deduction or conclusion which a jury is permitted to draw from facts which have been established by either the

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2 direct or circumstantial evidence introduced in the case.
3 An inference is not drawn by speculation or guesswork
4 but rather arrived at by an exercise of your reason and
5 common sense. So while considering the evidence
6 presented, you are permitted to draw, from the facts which
7 you find to have been proven, such reasonable inferences
8 as seem justified in the light of your experience. But
9 here again, let me remind you that whether based on direct
10 or circumstantial evidence or the logical, reasonable
11 inferences drawn from such evidence, you must be satisfied
12 of the guilt of the defendant beyond a reasonable doubt.

13 Now, as I mentioned earlier, you are of course
14 the sole judges of the credibility or truthfulness of
15 each witness in this case.

16 In weighing the testimony of each witness,
17 you should consider his relationship to the Government or
18 to the defendant, the extent of the witness' interest,
19 if any, in the outcome of the case, his manner of testify-
20 ing, his appearance and conduct while on the stand, his
21 intelligence, the strength or weakness of his regulation,
22 and the extent to which he has been corroborated or
23 contradicted, if at all, by the other credible evidence.

24 The ultimate question for you to decide in
25 passing upon the credibility of a witness is:

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2 Did the witness tell the truth; and to this
3 end, you are to use your every-day common sense.

4 If you find that any witness has deliberately
5 testified falsely to any material fact, you may disregard
6 all of his testimony or you may accept that part of his
7 testimony which you believe is truthful, or which you find
8 to be corroborated or supported by other evidence in the
9 case.

10 Now just a word about experts.

11 The rules of evidence ordinarily do not permit
12 a witness to testify as to his opinions or conclusions.
13 A so-called expert, however, is an exception to this rule.
14 A witness, who by reason of his training and experience
15 has become an expert in a certain matter may be permitted
16 to state his opinion as to that matter if it is material
17 to the case and he may also state the reasons for such
18 opinion.

19 You have heard the testimony of a chemist and
20 fingerprint detection expert who was called as a witness
21 by the Government. It is important for you to keep in
22 mind that you evaluate the testimony of this expert witness
23 in the same way that you decide whether to believe an
24 ordinary witness. Has the expert witness impressed
25 you? Did his judgment on the subject on which he is

presumed to speak with authority carry the indicia of knowledge and competence? Did his judgment appear sound and convincing? Are you satisfied that he gave you a fair, unbiased and accurate opinion? Remember, it is not who testifies that counts, but rather the quality of the evidence that is determinative.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible to impeach the credibility of the witness and to establish the truth of the statements. It is the exclusive province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

One final word about witnesses. There were some references to other persons possibly being called as witnesses. If a possible witness was not called, but it was equally within the power of either the prosecution or the defense to bring the witness into court, then the failure to call that witness is open to an inference against both parties. Thus, you are free to draw an inference that the testimony of an equally available witness would have been unfavorable to either party, or you may refuse to draw any inference at all. In a Federal criminal

1 trial both the Government and a defendant are entitled
2 to receive a subpoena calling for the attendance of a
3 witness, and no matter where the witness lives in the
4 United States, he is required to appear when served with
5 such a subpoena.
6

7 As I mentioned to you earlier, in my remarks to
8 you, anything that counsel either for the Government or for
9 the defense may have said with respect to matters in
10 evidence, whether during the trial, in argument or in
11 summation, is not evidence in the case. This case must
12 be decided by you solely on the basis of the sworn testimony
13 of the witnesses and such exhibits as were received in
14 evidence. The actions of the Court during the trial in
15 ruling on motions or objections are not to be taken by
16 you as any indication of the guilt or innocence of the
17 defendant. These are matters of procedure and law, with
18 which you have no concern.

19 From time to time, conferences at the bench
20 out of your hearing were conducted at the request of the
21 attorneys for the Government or for the defense. These
22 were conferences solely on questions of law which it is my
23 duty to decide. You are not to draw any inferences
24 against either side to this controversy for requesting such
25 conferences, because an attorney would be remiss in his

1 duty to his client if he did not protect his interests
2 in the manner provided by law which it is my function to
3 decide.
4

5 Let me once again remind you that the duty of
6 imposing sentence in the event of a guilty verdict rests
7 exclusively with the Court. The punishment which may
8 be inflicted upon a defendant must never be considered by
9 you in any way in arriving at an impartial verdict as to
10 the guilt or innocence of the accused.

11 You are about to commence your deliberations.
12 The purpose of your deliberations is to exchange views with
13 your fellow jurors, to discuss and consider the evidence,
14 to listen to each other's arguments, to present your own
15 views and to reach a unanimous verdict based solely and
16 wholly on the evidence, if you can do so without violence
17 to your own individual judgment.

18 Each of you must decide the case for yourself,
19 but do so only after an impartial consideration of the
20 evidence in the case with your fellow jurors. Do not
21 hesitate to reexamine your views and to change your opinion
22 when, after discussion, it appears to be in error. But
23 after carefully considering all of the evidence in the
24 case and the arguments of your fellow jurors, you hold a
25 conscientious view which differs from the others, you are

not to yield your view simply because you are outnumbered.

Your final vote must reflect your objective and deeply thought out determination of the issues.

If, in the course of your deliberations, you need to examine any of the exhibits, desire any of the testimony to be read, or find that you are uncertain as to the meaning of any part of the Court's instructions, you may send a note to the Court asking for whatever will clear up any of the questions you may have.

In communicating with the Court, however, I should admonish you that you should not indicate how your vote may then be divided.

Your oath sums up your duty, and that is without fear or favor to anyone, you will well and truly try the issues between this defendant and the Government of the United States based solely upon the evidence and the Court's instructions as to the law.

It is important to the Government; it is . important to the defendant.

Will counsel approach the side bar.

(At the side bar.)

THE COURT: Any exceptions noted?

MR. ARROLL: No exceptions.

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2 MR. AKERMAN: I have nothing to add, your
3 Honor. The only question, are they going to be sent to
4 deliberate this evening?

5 THE COURT: You have just until about 6.30.

6 MR. AKERMAN: If it would be possible to have
7 them go longer simply because if we lose two alternates --

8 THE COURT: I wouldn't keep them past seven
9 o'clock on a night like this. That's the best I can
10 do.

11 MR. ARROLL: May the record indicate to the
12 extent the Court did not charge in compliance with the
13 defendant's requested voir dire, the defendant respect-
14 fully excepts.

15 THE COURT: I can send them home and have them
16 commence their deliberations tomorrow morning.

17 MR. AKERMAN: I think that might be best, your
18 Honor, knowing there will be 12 people here tomorrow.

19 THE COURT: Somebody will have to stand by.

20 MR. AKERMAN: The other possibility would be
21 if they started now they would have an hour and forty-five
22 minutes. If it is possible --

23 THE COURT: I can't stay myself until eight.

24 (In open court.)

25 THE COURT: I think rather than commence your

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deliberations and go on for an hour or whatever, the weather doesn't sound like it is the best, I think I will excuse you until tomorrow morning. I will ask all 14 of you to return to the courtroom at 9.30 or 10.00, whichever is best. We will make it at 9.30.

If you will assemble in the courtroom here rather than in the jury room, then I can excuse the two alternates but I don't want to excuse the two alternates until the jury actually commences to deliberate. Don't start to talk about the case and when you come back, don't discuss it until all 12 of you are together and a marshal has been sworn and you have been sent in to the jury room. I just ask you to come back here as if the trial was still going on and come back at 9.30 and report to this courtroom.

Thank you very much.

(Jury left.)

(Time noted: 5.15 p.m.)

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U. S. ATTORNEY
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ROBERT B. FISKE JR.

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